IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 461

CATAHOULA BANK,

Petitioner,

versus

LEON KIRBY, Debtor.

BRIEF OF RESPONDENT, LEON KIRBY, DEBTOR.

FRANK J. LOONEY,
Attorney for Respondent.

Montgomery-Andree Printing Co., Inc., 430-32 Chartres, N. O., La.

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STATEMENT OF THE CASE.

We cannot accept petitioner's statement of the case, nor the summary statement of the matters involved, contained in the petition for the writ. Our principal reasons for our refusal to accept these statements are, that the facts are not stated in their chronological order, and that conclusions rather than facts have been emphasized. For illustration, the statement begins with the execution of a deed from the debtor to petitioner of date, February 28th, 1938. This was not the beginning of the series of events that led to this litigation. In fact, it was the last trans-

action between the parties. The Catahoula Bank had long prior to this date been a creditor of Leon Kirby. The bank held a mortgage on Kirby's home, which was also under mortgage to the Federal Land Bank.

At the time of the execution of the deed from Kirby to the bank, the bank assembled all Kirby's debts, took the deed, and at the same time, before the same Notary Public, and in the presence of the same attesting witnesses, entered into a contract with Kirby, under which he would have the right to redeem his farm at any time before December 31st, 1938. This contract provided:

> "It being the intended purpose of this agreement to permit the said Kirby to re-purchase this property at any time on or before December 31st, 1938, upon him, the said Kirby, re-imbursing to the Bank all money invested in said property by said Bank together with interest as aforesaid thereon."
>
> (Page 16 of Record).

For a statement of the case in conformity with the rules of this Court, we quote from the opinion of the Circuit Court of Appeals (page 42 of the printed record), as follows:

> "Leon Kirby on December 20, 1938, filed a petition for relief as a farmer-debtor under Section 75 of the Bankruptcy Act. On December 23, 1938, he applied for extension of the period for redeeming 480 acres of land for the time necessary for the carrying out of the purposes of Section 75, and the whole matter was referred to the Supervising Conciliation Commissioner. Catahoula Bank claimed title to the land, asserting that Kirby had only a lease with an option to buy which expired December 31, (fol.

44) 1938, so there was nothing for the bankruptcy to take hold of; and to alter the contract would take the Bank's property without due process of law. The debtor contended that although he had conveyed title to the Bank he had reserved a lease for 1938, and the right to redeem the land during that term by paying stated debts due to and taken up by the Bank, and that Section 75 could be constitutionally applied to his relief to carry out a plan of rehabilitation submitted by him which looked to the full payment of the Bank over a period of years. The Commissioner in a careful opinion held with the debtor and the district judge affirmed and decreed to Kirby an extension of time, enjoining the Bank from alienating the property pending the proceedings, or from interfering with the possession of Kirby till the further order of the Court. The Bank appeals."

We also quote from the opinion of the Conciliation Commissioner (page 18 of the printed record), as follows, to-wit:

"Contentions of the Petitioning Debtor.

"The debtor contends that the deed and contemporaneous agreement dated February 28th, 1938, constitute a pignorative contract and consequently that the relationship of debtor and creditor continues to exist between him and Catahoula Bank. Alternatively that if the two documents referred to are not an act of hypothecation but a sale, vente a remere, that the debtor has a right to redeem the 480 acres under Section 75 of the Bankruptcy Act, particularly Subsection (n) as follows:"

"Contentions of Catahoula Bank.

"Catahoula Bank contends, first, that the contracts under consideration do not fall within the classification of a deed with the right of redemption under

the Revised Civil Code of Louisiana, but constitute an opinion to the debtor to purchase and consequently the matter is without the jurisdiction of the Court under Section 75. The Bank further contends that even if it should be held that the documents constitute a deed with right of redemption that the law and jurisprudence of Louisiana govern and regulate the rights of the parties and that the case does not fall within the intention of Congress in its language used in Section 75 (n) of the Bankruptcy Act relating to equity of redemption. Furthermore, the Bank contends that if it should be held that Congress intended to apply the language of Section 75 (n) to a contract of this kind, then that section to that extent is an arbitrary and unreasonable exercise of the power of Congress over bankruptcies, and, since it impairs the obligations of contracts, it violates the provisions of the Fifth Amendment to the Federal Constitution preventing the taking of property without due process of law."

The report of the Conciliation Commissioner on the law and the facts was adopted *in toto* by the trial judge, and his judgment was affirmed on appeal.

ARGUMENT.

The petition assigns seven specifications of error, and five points are set up under the summary of argument. In reality, there is only one point in the case, and that is, does the debtor, Leon Kirby, have the right under facts in the case, none of which are disputed, and under the statute, to redeem his farm?

The contentions of both parties are set up in our statement of the case, quoted from the opinion of the Com-

missioner. These contentions are disposed of by the opinion of the Commissioner (pages 1 to 28 of the printed record), and by the opinion of the Court of Appeals (pages 42 to 45 of the printed record).

It is immaterial for the correct decision of the case, whether the deed and contemporaneous agreement constitute a contract of security or a sale with the right of redemption. In either case, the debtor is entitled to the relief prayed for, and granted by both the District Court and the Court of Appeals.

It is the universal rule of all Courts to give a contract the effect intended by the parties, if that intention can be ascertained from the contract. The intention of the parties could not have been more definitely stated than it was stated in the contract, and found on page 16 of the record:

> "It being the intended purpose of this agreement to permit the said Kirby to re-purchase this property at any time on or before December 31st, 1938, upon him, the said Kirby, re-imbursing to the Bank all money invested in said property by said Bank together with interest as aforesaid thereon."

A citation of authorities at this time can hardly be necessary, as this is an ancient and honored doctrine. As far back as the case of *Holmes v. Grant, 8 Paige 243*, it was recognized and enforced by this Court, and has been uniformly followed since that time.

In the case of *Latiolais v. Breaux, 154 La. 1008, 98 So. 620*, the Supreme Court of the State of Louisiana foreclosed all controversy, when it said:

> "The leading case on the subject is Marbury vs. Colbert, 105 La. 467, 29 South. 871. That case lays down the rule that—
>
> > 'Redeemable sales of immovable property, unaccompanied by delivery of the thing sold, will be considered, as between the parties, in the absence of evidence to the contrary, as mere contracts of security.'"

In this case we have a redeemable sale, unaccompanied by delivery of the thing sold, with a contract stipulating:

> "It being the intended purpose of this agreement to permit the said Kirby to re-purchase this property at any time on or before December 31st, 1938, upon him, the said Kirby, re-imbursing to the Bank all money invested in said property by said Bank together with interest as aforesaid thereon."

This doctrine still prevails in Louisiana, as appears from the recent case of *Baker v. Patton, 191 La. 784, 186 So. 338*. In this case the court held that the contract in question was a sale with the right of redemption, for the reason, *that the vendor did not remain in possession of the land sold.*

If under any theory of the law, the agreement between the parties in this case was not a contract of security, it certainly was a sale with the right of redemption, and it is not material, whether it was a sale with the right of redemption under statutes of Louisiana, or some other

right of redemption. All that the Bankruptcy Statute requires, is that it be a sale with the right of redemption.

But petitioner contends that the agreement of the parties does not come within the technical language of the Article of the Louisiana Civil Code, governing contracts of sale with the right of redemption. The right of redemption is defined by *Article 2567 of the Louisiana Civil Code*, as follows:

> "The right of redemption is an agreement or paction, by which the vendor reserves to himself the power of taking back the thing sold by returning the price paid for it."

It is argued, that the agreement of the parties does not evidence a reservation on the part of the Respondent, but on the other hand a grant from the petitioner.

Petitioner cites the case of *Pitts, et al., v. Lewis, 7 La. 552*, which held, that the reservation must be made in the deed, and could not be made by a subsequent contract. It is conceded that this decision has been overruled to the extent of recognizing that the right of redemption may be made by counter letter. This case is simply not in point.

There is next cited the case of *Glover v. Abney, 160 La. 177, 106 So. 735*. This case is easily differentiated from the case now before the Court. In the cited case, Mary Glover and Barcus Hubbard sold the land to Zack Abney for a consideration of Seventeen Hundred Fifty and No/100 ($1750.00) Dollars, cash in hand paid. The same day, or the following day, Zack Abney executed a

contract in favor of Barcus Hubbard, in which he obligated himself to convey not only his interest in the land, but also the interest of Mary Glover, his co-vendor. The parties to the second contract were not the same as the parties to the deed. There is no similarity between the conditions under which the deeds were executed in the cited case, and the case now before the Court.

To point out the difference, let us revert to the above cited articles of the Louisiana Civil Code, which says:

> "The right of redemption is an agreement or paction by which the vendor reserves to himself the power of taking back the thing sold by returning the price paid for it."

Let us again quote from the contract:

> "It being the intended purpose of this agreement to permit the said Kirby to re-purchase this property at any time on or before December 31st, 1938, upon him, the said Kirby, re-imbursing to the Bank all money invested in said property by said Bank together with interest as aforesaid thereon."

When the deed and contract were signed, Kirby, the respondent, had the right to take his land back by returning the price paid for it, which was "all the money invested by the Bank in the property with interest." This was a right that he required before he would sign the deed. What plainer reservation could he have made?

The law requires no specific language for a reservation of this right and the courts in construing the above quoted Article of the Civil Code have not limited themselves to any particular words.

We refer the court to the very recent case of *Baker v. Patton, 191 La. 784, 186 So. 336.*

We also refer the court to the case of *Harper v. Citizens Bank, 51 La. An. 513, 25 So. 466,* wherein the court used this language:

> "This is followed by a clause setting forth that the right and privilege of redeeming and buying back the property was given to the Vendors, which right was to continue in force up to the First of February, 1893."

Under petitioner's construction of the Article, this decision is wrong. The contract did not use the word "reserved" but on the other hand, it stated that the right of buying back was given by the Vendor. The argument that the provision in the contract giving Kirby the right to repurchase the property was a grant and is not a reservation is too technical for serious consideration.

The Trial Court very clearly and definitely decided the point in these words:

> "In my opinion, the right to redeem was created by reservation as the two contracts were executed on the same day and appear to have been a continuous act.
>
> In view of the foregoing, I find that the deed and contract are, under the law of Louisiana, a sale with reservation of a right to redeem."

It is argued that the contract fails to come under the provisions of the Article of the Civil Code, for the reason that the consideration for the re-purchase or redemption is different from the consideration for the sale of the land.

It is argued, that the total consideration stated in the deed was Eight Thousand Three Hundred Forty-four and 35/100 ($8,344.35) Dollars, whereas, the price to be paid was for the redemption of the land totaled Nine Thousand, Nine Hundred Ten and 50/100 ($9,910.50) Dollars. Again we quote from the contract, as shown on page 14 et seq. of the printed record:

> "Whereas, the consideration as recited in said deed and conveyance was the assumption by said bank of the payment and satisfaction of all mortgages and encumbrances affecting said property sold and particularly that certain mortgage in favor of The Federal Land Bank of New Orleans, the full amount thereof, including all interest and costs, being the sum of $6344.31. In addition, the said Catahoula Bank assumed as part of the purchase price that certain mortgage indebtedness affecting said property and in favor of said Catahoula Bank, the same being the sum of $250.00. That in addition it is here acknowledged and admitted that said Catahoula Bank was required to pay the sum of $1066.19 in order to secure the cancellation of certain judgment encumbrances affecting said property. *All of which being the consideration for said transfer and sale and all amounting* to the total sum of $9,910.50."

The point, that there was one consideration for the original sale and another consideration for the redemption of the land, vanishes when the record is consulted.

The Trial Court having found that the transaction between the parties, as evidenced by the deed and counter contract, is a sale with the right of redemption, it follows that the power of the Court to grant an extension of time

for the redemption of the land is certainly given by the Bankruptcy Act. Section (n) of this act reads as follows:

> "The filing of a petition or answer with the clerk of court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under this section, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, *including, among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired,* or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition."

From the above quoted section the following is clear:

(1) The farmer and all his property come under the exclusive jurisdiction of this Court.

(2) The jurisdiction of the Court extends to all real and personal property and any equity or right in any such property including contracts for purchase, contracts for deed, or conditional sales contracts, the right or equity of redemption where the period of redemption has not or had not expired, and where a deed of trust given as security, or where the sale had not been confirmed.

The position of the petitioner is that the right of redemption applies only to rights given by state statutes to redeem after the land had been sold at a forced and public sale. This is contrary to the above quoted statute

which covers contracts for purchase, contracts for deed, or conditional sales contracts, and the right or equity of redemption. To say that right of redemption applies only to forced sales under state statutes is to say that this phase of the Bankruptcy Statute is inoperative in the State of Louisiana, and therefore not a uniform statute. If there is one indispensible feature to a statute of bankruptcy, that feature is uniformity. Under the Constitution Congress has the right to pass a uniform Bankruptcy Act.

In the case now under consideration, the parties had entered into a contract, and under the laws of this state, contracts entered into have the effect of laws between the parties. We fail to see any difference between the rights of parties under a contract to redeem a piece of property voluntarily given to satisfy a debt and the rights of a party to redeem property taken from him by a forced sale, when the state statute gives a period of redemption for that property. The law maker certainly did not make any distinction, for the statute above quoted extends to contracts for purchase, contracts for deed, and conditional sales contracts, and for the right of redemption. The Courts have approved other statutes of similar nature and have given them a broad and liberal interpretation so as to effectuate the intent of Congress.

Cont. Ill. Nat. Bank and Trust Co. v. Chicago R. I. & P. R. R. Co., 294 U. S. 648, 79 L. Ed. 1110;

Wright v. Vinton Mt. Trust Bank, 300 U. S. 440, 81 L. Ed. 739.

Since the statute that we have quoted is free of any ambiguities and since it, in plain language, covers the case before the Court, we deem that further argument is

unnecessary to show that the petitioner in this case is entitled to redeem his property.

This leaves only the constitutional question raised by petitioner, that is, that the Act of Congress violates Articles 5 and 14 of the Federal Constitution in that they constitute a deprivation of respondent's vested rights under a contract legally and validly entered into and would constitute a deprivation of respondent's vested rights and a taking of its property without due process of law.

The answer to this contention is found in the case of *Wright v. Union Central Life Insurance Company, 304 U. S. 517, 82 L. Ed. 1501.* The Court said:

> "If the argument is that Congress has no power to alter property rights, because the regulation of rights in property is a matter reserved to the States, it is futile. Bankruptcy proceedings constantly modify and affect the property rights established by state law. A familiar instance is the invalidation of transfers working a preference, though valid under state law when made. Recent decisions illustrate other instances:
>
> 'A court of Bankruptcy may affect the interests of lien holders in many ways. To carry out the purposes of the Bankruptcy Act, it may direct that all liens upon property forming a part of the bankrupt's estate be marshalled; or that the property be sold free of encumbrances and the rights of all lien holders be transferred to the proceeds of the sale. Van Huffel vs. Harkelrode, 284 U. S. 225, 227, 76 L. Ed. 256, 258, 52 S. Ct. 115, 78 A. L. R. 453, 18 Am. Bankr. Rep. (N. S.) 730. Despite the peremptory terms of a pledge, it may enjoin sale of the collateral, if it finds that the sale would hinder or delay preparation or consummation of a

plan of reorganization. Continental Illinois National Bank & Trust Co. vs. Chicago, R. I. & P. R. Co., 294 U. S. 648, 680, 681, 79 L. Ed. 1110, 1130, 1131, 55 S. Ct. 595, 27 Am. Bankr. Rep. (N. S.) 715. It may enjoin like action by a mortgagee which would defeat the purpose of (#75) subsection (s) to effect rehabilitation of the former mortgagor.' Wright vs. Vinton Mountain Trust Bank, 300 U. S. at 470, 61 L. Ed. 747, 57 S. Ct. 556, 112 A. L. R. 1455, 33 Am. Bankr. Rep. (N. S.) 353.

"Such action does not indicate a disregard of the property rights created by state law. The state law still establishes the norm to which Congress must substantially adhere; a serious departure from this norm, i. e., from the quality of the property rights created by the state courts, has led to condemnation of the Federal action as constituting a deprivation of property without due process.

"Property rights do not gain any absolute inviolability in the bankruptcy courts because created and protected by state law. Most property rights are so created and protected. But if Congress is acting within its bankruptcy power, it may authorize the bankruptcy court to affect these property rights, provided the limitations of the due process clause are observed."

We respectfully submit that the opinion of the Trial Court and of the Circuit Court of Appeals covers the case, and the Writ should be refused.

Respectfully submitted,

FRANK J. LOONEY,
Attorney for Respondent.